

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs September 24, 2008

**TABITHA ANN TRICE v. STATE OF TENNESSEE**

**Appeal from the Circuit Court for Bedford County**  
**No. 15553      Robert Crigler, Judge**

---

**No. M2007-02034-CCA-R3-HC - Filed January 6, 2009**

Petitioner, Tabitha Ann Trice, appeals the habeas corpus court's dismissal of her petition for writ of habeas corpus in which she alleged that the underlying indictment failed to state an offense. Petitioner argued that Tennessee Code Annotated section 39-15-402 does not permit criminal prosecution where the victim is a fetus. The habeas corpus court determined that the indictment was not void on its face and that the trial court had jurisdiction over the subject matter and the person. Further, the habeas corpus court determined that Petitioner's sentence had not expired. We conclude that the habeas corpus court properly dismissed the petition for writ of habeas corpus where the judgment is merely voidable, not void.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed.**

JERRY L. SMITH, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J. and DAVID H. WELLES, J., joined.

Catherine Hatcher Hickerson, Assistant Public Defender, Shelbyville, Tennessee, for the appellant, Tabatha Ann Trice..

Robert E. Cooper, Jr., Attorney General and Reporter; Jennifer L. Bledsoe, Assistant Attorney General; Mike McCown, District Attorney General and Michael D. Randles, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

Petitioner was indicted on June 28, 2004, for aggravated child abuse and aggravated child neglect. Specifically, Count 1 of the indictment alleged:

[O]n or about the 7<sup>th</sup> day of MARCH 2004, . . . [Petitioner] did knowingly, and other than by accidental means, treat [R.M.T.],<sup>1</sup> a child under six (6) years of age, in such a manner as to inflict serious bodily injury to the child, in violation of T.C.A. 39-15-402, . . . .

Count 2 of the indictment alleged:

On or about the 7<sup>th</sup> day of MARCH 2004, . . . [Petitioner] did knowingly, and other than by accidental means, neglect [R.M.T.], a child under six (6) years of age, so as to adversely affect the child's health and welfare, resulting in serious bodily injury to the child, in violation of T.C.A. 39-15-402, . . . .

Subsequently, Petitioner pled guilty to an amended charge of class B felony aggravated child abuse, on July 19, 2004. As a result, Petitioner was sentenced to eight years at thirty percent, to be served on probation after serving one year of the sentence day-for-day in the Bedford County Jail. On October 25, 2004, the judgment was amended to reflect Petitioner's release eligibility status as "violent 100%."

On December 6, 2004, Petitioner was found guilty of violating the terms and conditions of her probation. As a result, Petitioner was ordered to serve the balance of her sentence, to be suspended if Petitioner: (1) spent the first two years on supervised Community Corrections; (2) served 365 days in jail; (3) completed rehabilitation and aftercare programs; and (4) obeyed all other rules and regulations of probation.

On June 20, 2005, Petitioner was ordered to the Buffalo Valley Rehabilitation Center for participation in a twenty-eight day rehabilitation program. On July 21, 2005, the trial court ordered that following successful completion of rehabilitation, Petitioner was to be placed on Community Corrections following a six-month placement in a Buffalo Valley affiliated halfway house. On July 24, Petitioner pled guilty to a violation of Community Corrections. She was resentenced to serve ten years at 100%.

Petitioner filed a petition for writ of habeas corpus in which she alleged that the indictment failed to state an offense because Tennessee Code Annotated section 39-15-402 does not permit criminal prosecution for child abuse where the victim is a fetus. As a result, Petitioner argued that her conviction is void and habeas corpus relief is the appropriate relief.

After a hearing, the habeas corpus court denied the petition. Specifically, the habeas corpus court determined:

---

<sup>1</sup>It is the policy of this Court to refer to minor victims of child abuse by their initials.

[I]t appears the Court has jurisdiction over both the subject matter and the person and that the sentence has not expired and the indictment on its face is not void in my opinion. You have to go to extraneous facts to show that.

If those facts were written into the indictment, which is the operative document in circuit court then, you would have a different outcome. In other words if what was in the sessions warrant<sup>2</sup> was in the indictment, I think it would probably be a void judgment if that was the case. But just to read the words of the indictment does make out the offense of aggravated child abuse.

Petitioner filed a timely notice of appeal.

### *Analysis*

On appeal, Petitioner argues that the habeas corpus court erred by denying habeas corpus relief on the ground that she could not be convicted of aggravated child abuse because the victim was a fetus. The State counters that Petitioner's claim, even if true, would render the judgment voidable, rather than void and thus, ineligible for habeas corpus relief.

The determination of whether to grant habeas corpus relief is a question of law. *See Hickman v. State*, 153 S.W.3d 16, 19 (Tenn. 2004). As such, we will review the habeas corpus court's findings de novo without a presumption of correctness. *Id.* Moreover, it is the petitioner's burden to demonstrate, by a preponderance of the evidence, "that the sentence is void or that the confinement is illegal." *Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 2000).

Article I, section 15 of the Tennessee Constitution guarantees an accused the right to seek habeas corpus relief. *See Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). A writ of habeas corpus is available only when it appears on the face of the judgment or the record that the convicting court was without jurisdiction to convict or sentence the defendant or that the defendant is still imprisoned despite the expiration of his sentence. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993); *Potts v. State*, 833 S.W.2d 60, 62 (Tenn. 1992). In other words, habeas corpus relief may be sought only when the judgment is void, not merely voidable. *See Taylor*, 995 S.W.2d at 83. "A void judgment 'is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant's sentence has expired.' We have recognized that a sentence imposed in direct contravention of a statute, for example, is void and illegal." *Stephenson v. Carlton*, 28 S.W.3d 910, 911 (Tenn. 2000) (quoting *Taylor*, 955 S.W.2d at 83).

---

<sup>2</sup>The sessions warrant charging Petitioner with aggravated child abuse alleged that Petitioner:

[D]id knowingly and intentionally ingest marijuana and cocaine during her pregnancy and after she delivered her baby boy, the baby did test positive for marijuana and cocaine and the baby was also born premature, and has to stay in neo-natal intensive care to be treated for withdrawals.

However, if after a review of the habeas petitioner's filings the habeas corpus court determines that the petitioner would not be entitled to relief, then the petition may be summarily dismissed. T.C.A. § 29-21-109; *State ex rel. Byrd v. Bomar*, 381 S.W.2d 280, 283 (Tenn. 1964). Further, a habeas corpus court may summarily dismiss a petition for writ of habeas corpus without the appointment of a lawyer and without an evidentiary hearing if there is nothing on the face of the judgment to indicate that the convictions addressed therein are void. *Passarella v. State*, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994).

The procedural requirements for habeas corpus relief are mandatory and must be scrupulously followed. *Archer*, 851 S.W.2d at 165; *Summers v. State*, 212 S.W.3d 251, 260 (Tenn. 2007); *Hickman*, 153 S.W.3d at 19-20. A habeas corpus court "properly may choose to summarily dismiss a petition for failing to comply with the statutory procedural requirements." *Summers*, 212 S.W.3d at 260; (citing *Hickman*, 153 S.W.3d at 21. Further, in *Summers*, our supreme court explained:

In the case of an illegal sentence claim based on facts not apparent from the face of the judgment, an adequate record for summary review must include pertinent documents to support those factual assertions. When such documents from the record of the underlying proceedings are not attached to the habeas corpus petition, a trial court may properly choose to dismiss the petition without the appointment of counsel and without a hearing.

212 S.W.3d at 261.

In the case herein, Petitioner did not submit the transcript from the guilty plea on appeal. "The petitioner bears the burden of providing an adequate record for summary review of a habeas corpus petition. . . ." *Id.* As stated above, this fact alone is a sufficient basis upon which a habeas corpus court may summarily dismiss a petition for writ of habeas corpus. However, our supreme court has stated:

A habeas corpus court may properly choose to dismiss a petition for failing to comply with the statutory procedural requirements; however, dismissal is not required. The habeas corpus court may instead choose to afford the petitioner an opportunity to comply with the procedural requirements, or the habeas corpus court may choose to adjudicate the petition on its merits. *See* Tenn. Code Ann. § 29-21-109 (2000) ("If, from the showing of the petitioner, the plaintiff would not be entitled to any relief, the writ *may* be refused, the reasons for such refusal being briefly endorsed upon the petition, or appended thereto.")

*Hickman*, 153 S.W.3d at 21 (footnotes omitted) (emphasis in original). In this case, the habeas corpus court chose to address the petition on the merits; therefore, this Court will do the same.

A valid indictment is essential to vest jurisdiction in the convicting court and, therefore, an indictment that is so defective that it fails to vest jurisdiction may be challenged in a habeas corpus

proceeding. *State v. Wyatt*, 24 S.W.3d 319, 320-23 (Tenn. 2000). Our supreme court has held that an indictment meets constitutional requirements if it provides sufficient information (1) to enable the accused to know the accusation to which answer is required, (2) to furnish the court adequate basis for the entry of a proper judgment, and (3) to protect the accused from double jeopardy. *State v. Hill*, 954 S.W.2d 725, 726-27 (Tenn. 1997). In addition, an indictment must state the facts of the offense in ordinary and concise language. See T.C.A. § 40-13-202. Our supreme court has also stated that an indictment that refers to the statute which defines the offense is sufficient and satisfies all constitutional and statutory requirements. See *State v. Sledge*, 15 S.W.3d 93, 95 (Tenn. 2000); see also *Ruff v. State*, 978 S.W.2d 95, 100 (Tenn. 1998).

The State agrees with Petitioner's assertion that the child abuse and neglect statute does not contemplate criminal prosecution where the victim is a fetus. In fact, there are two Attorney General Opinions and several opinions from this Court that have pointed out that the statute for child abuse and neglect specifically defines a victim as a "child" and not a "fetus." See *State v. Lisa Ann Hudson*, No. M2006-01051-CCA-R9-CO, 2007 WL 1836840, at \*2 (Tenn. Crim. App., at Nashville, June 27, 2007); *Jessica Renee Richards v. State*, No. E2004-02326-CCA-R3-PC, 2005 WL 2138244, at \*4 (Tenn. Crim. App., at Knoxville, Sept. 2, 2005); Tenn. Op. Atty. Gen. No. 95-023, 1995 WL 144713 (Mar. 27, 1995); Tenn. Op. Atty. Gen. No. 02-136, 2002 WL 31912595 (Dec. 23, 2002). However, as set forth previously, it is apparent from reading the indictments herein that the indictment sets forth both the elements of the offenses and the statutes which define the offenses. The indictment was issued after the victim was born and does not mention the victim as a "fetus." Therefore, the indictment is sufficient to vest jurisdiction in the convicting court. See *Sledge*, 15 S.W.3d at 95; *State v. Carter*, 988 S.W.2d 145, 149 (Tenn. 1999); *Ruff*, 978 S.W.2d at 100; *Hill*, 954 S.W.2d at 728.

Further, a "plea of guilty waives all non-jurisdictional issues and constitutional infirmities." *State v. James N. Cook*, No. M2006-01247-CCA-R3-CD, 2007 WL 2702778, at \*7 (Tenn. Crim. App., at Nashville, Sept. 17, 2007), (citing *State v. McKinney*, 74 S.W.3d 291, 306 (Tenn. 2002) *perm. app. denied*, (Tenn. Jan. 28, 2008); *State v. Pettus*, 986 S.W.2d 540, 542 (Tenn. 1999)). Thus, the judgment in this case is valid on its face and is, at most, voidable. The habeas corpus court properly dismissed the petition because the judgment is not void and Petitioner's sentence has not expired. *Stephenson*, 28 S.W.3d at 911. Petitioner is not entitled to relief on this issue.

### *Conclusion*

For the foregoing reasons, the judgment of the habeas corpus court is affirmed.

---

JERRY L. SMITH, JUDGE

